

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 17, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SANDRA V.,¹

Plaintiff,

v.

ANDREW M. SAUL, the Commissioner
of Social Security,

Defendant.

No. 4:20-CV-5040-EFS

**ORDER DENYING PLAINTIFF'S
SUMMARY-JUDGMENT MOTION
AND GRANTING DEFENDANT'S
SUMMARY-JUDGMENT MOTION**

Before the Court are the parties' cross summary-judgment motions.²

Plaintiff Sandra V. appeals the denial of benefits by the Administrative Law Judge (ALJ). She alleges the ALJ erred by 1) failing to properly assess whether Plaintiff met or equaled a listing, 2) discounting Plaintiff's symptom reports, 3) failing to properly consider lay statements from her sister, and 4) improperly assessing her

¹ To protect the privacy of the social-security Plaintiff, the Court refers to her by first name and last initial or by "Plaintiff." See LCivR 5.2(c).

² ECF Nos. 17 & 19.

1 residual functional capacity and therefore relying on an incomplete hypothetical at
2 step five. In contrast, Defendant Commissioner of Social Security asks the Court to
3 affirm the ALJ's decision finding Plaintiff not disabled. After reviewing the record
4 and relevant authority, the Court denies Plaintiff's Motion for Summary
5 Judgment, ECF No. 17, and grants the Commissioner's Motion for Summary
6 Judgment, ECF No. 19.

7 I. Five-Step Disability Determination

8 A five-step sequential evaluation process is used to determine whether an
9 adult claimant is disabled.³ Step one assesses whether the claimant is currently
10 engaged in substantial gainful activity.⁴ If the claimant is engaged in substantial
11 gainful activity, benefits are denied.⁵ If not, the disability-evaluation proceeds to
12 step two.⁶

13 Step two assesses whether the claimant has a medically severe impairment,
14 or combination of impairments, which significantly limits the claimant's physical
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19 ³ 20 C.F.R. §§ 404.1520(a), 416.920(a).

20 ⁴ *Id.* §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

21 ⁵ *Id.* §§ 404.1520(b), 416.920(b).

22 ⁶ *Id.* §§ 404.1520(b), 416.920(b).

1 or mental ability to do basic work activities.⁷ If the claimant does not, benefits are
2 denied.⁸ If the claimant does, the disability-evaluation proceeds to step three.⁹

3 Step three compares the claimant's impairments to several recognized by the
4 Commissioner to be so severe as to preclude substantial gainful activity.¹⁰ If an
5 impairment meets or equals one of the listed impairments, the claimant is
6 conclusively presumed to be disabled.¹¹ If an impairment does not, the disability-
7 evaluation proceeds to step four.

8 Step four assesses whether an impairment prevents the claimant from
9 performing work she performed in the past by determining the claimant's residual
10 functional capacity (RFC).¹² If the claimant is able to perform prior work, benefits
11 are denied.¹³ If the claimant cannot perform prior work, the disability-evaluation
12 proceeds to step five.

13 Step five, the final step, assesses whether the claimant can perform other
14 substantial gainful work—work that exists in significant numbers in the national
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16 ⁷ 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

17 ⁸ *Id.* §§ 404.1520(c), 416.920(c).

18 ⁹ *Id.* §§ 404.1520(c), 416.920(c).

19 ¹⁰ *Id.* §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

20 ¹¹ *Id.* §§ 404.1520(d), 416.920(d).

21 ¹² *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

22 ¹³ *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

economy—considering the claimant’s RFC, age, education, and work experience.¹⁴
If so, benefits are denied. If not, benefits are granted.¹⁵

The claimant has the initial burden of establishing entitlement to disability benefits under steps one through four.¹⁶ At step five, the burden shifts to the Commissioner to show that the claimant is not entitled to benefits.¹⁷

II. Factual and Procedural Summary

Plaintiff filed Title II and XVI applications, alleging an amended disability onset date of August 10, 2015.¹⁸ Her claims were denied initially and upon reconsideration.¹⁹ A video administrative hearing was held before Administrative Law Judge Marie Palachuck.²⁰

In denying Plaintiff’s disability claims, the ALJ made the following findings:

¹⁴ 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496, 1497-98 (9th Cir. 1984).

¹⁵ 20 C.F.R. §§ 404.1520(g), 416.920(g).

¹⁶ *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

¹⁷ *Id.*

¹⁸ AR 246-52 & 254-64. *See also* AR 66 (amending disability onset date to August 10, 2015).

¹⁹ AR 144-49 & 152-61.

²⁰ AR 41-72.

- 1 • Plaintiff met the insured status requirements through December 31,
2 2016;
- 3 • Step one: Plaintiff had not engaged in substantial gainful activity
4 since July 1, 2011²¹;
- 5 • Step two: Plaintiff had the following medically determinable severe
6 impairments: post-polio myelitis, left lower extremity; chronic back
7 pain; obesity (BMI 33-36); depressive disorder; and anxiety disorder;
- 8 • Step three: Plaintiff did not have an impairment or combination of
9 impairments that met or medically equaled the severity of one of the
10 listed impairments;
- 11 • RFC: Plaintiff had the RFC to perform light work except:

12 She can only stand and walk up to 2 hours in and [sic] eight
13 hour workday. Postural activities can be performed on an
14 occasional basis, except she can rarely climb stairs and never
15 climb ladders, ropes, or scaffolds. Further, [Plaintiff] would
16 need to avoid all exposure to hazards and walking on uneven
17 ground. From a psychological perspective, [Plaintiff] is able
18 to understand, remember, and carry out simple, routine
19 repetitive tasks and instructions. She is able to maintain
20 concentration, persistence, and pace on those tasks for 2-hour
21 intervals between regularly scheduled breaks. She should be
22 in a predictable environment with seldom change and no
23 fast-paced production rate of work. Interaction with the
 public and co-workers should be limited to superficial, which
 was defined as non-collaborative with no tandem tasks.

21 ²¹ Although Plaintiff amended her disability onset date at the hearing, the ALJ's
22 decision did not reflect the amended disability onset date. AR 66, 21, & 23.

- 1 • Step four: Plaintiff was not capable of performing past relevant work;
2 and
- 3 • Step five: considering Plaintiff's RFC, age, education, and work
4 history, Plaintiff could perform work that existed in significant
5 numbers in the national economy, such as garment sorter, mail clerk,
6 and final assembler.²²

7 When assessing the medical-opinion evidence, the ALJ gave:

- 8 • significant weight to the testifying opinions of John Morse, M.D. and
9 Marian Martin, Ph.D.;
- 10 • some weight to the treating opinion of Samantha Price, DPM and the
11 reviewing opinions of John Gilbert, Ph.D. and Stacy Koutrakos,
12 Psy.D.; and
- 13 • little to some weight to the reviewing opinions of Donna LaVallie,
14 D.O. and Gordan Hale, M.D.²³

15 The ALJ also found Plaintiff's medically determinable impairments could
16 reasonably be expected to cause some of the alleged symptoms, but her statements
17 concerning the intensity, persistence, and limiting effects of those symptoms were
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21 ²² AR 15-40

22 ²³ AR 30-32.

1 not entirely consistent with the medical evidence and other evidence in the
2 record.²⁴ Likewise, the ALJ discounted the lay statement from Plaintiff's sister.²⁵

3 Plaintiff requested review of the ALJ's decision by the Appeals Council,
4 which denied review.²⁶ Plaintiff timely appealed to this Court.

5 **III. Standard of Review**

6 A district court's review of the Commissioner's final decision is limited.²⁷ The
7 Commissioner's decision is set aside "only if it is not supported by substantial
8 evidence or is based on legal error."²⁸ Substantial evidence is "more than a mere
9 scintilla but less than a preponderance; it is such relevant evidence as a reasonable
10 mind might accept as adequate to support a conclusion."²⁹ Moreover, because it is
11 the role of the ALJ and not the Court to weigh conflicting evidence, the Court
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17 ²⁴ AR 27-28.

18 ²⁵ AR 32.

19 ²⁶ AR 1-8.

20 ²⁷ 42 U.S.C. § 405(g).

21 ²⁸ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

22 ²⁹ *Id.* at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)).
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1 upholds the ALJ's findings "if they are supported by inferences reasonably drawn
2 from the record."³⁰ The Court considers the entire record as a whole.³¹

3 Further, the Court may not reverse an ALJ decision due to a harmless
4 error.³² An error is harmless "where it is inconsequential to the [ALJ's] ultimate
5 nondisability determination."³³ The party appealing the ALJ's decision generally
6 bears the burden of establishing harm.³⁴

7 IV. Analysis

8 A. Step Three (Listings): Plaintiff fails to establish error.

9 Plaintiff contends the ALJ erred by 1) finding that Plaintiff's impairments
10 did not meet Listings 1.04 and 11.11, and 2) failing to consider, beyond a
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13 ³⁰ *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

14 ³¹ *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court "must
15 consider the entire record as whole, weighing both the evidence that supports and
16 the evidence that detracts from the Commissioner's conclusion," not simply the
17 evidence cited by the ALJ or the parties.); *Black v. Apfel*, 143 F.3d 383, 386 (8th
18 Cir. 1998) ("An ALJ's failure to cite specific evidence does not indicate that such
19 evidence was not considered[.]").

20 ³² *Molina*, 674 F.3d at 1111.

21 ³³ *Id.* at 1115 (quotation and citation omitted).

22 ³⁴ *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).
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1 boilerplate finding, whether Plaintiff's impairments met or medically equaled
 2 Listing 1.02A.

3 If a claimant meets all of the listing criteria, she is considered disabled at
 4 step-three. A claimant who does not meet all of the listing criteria may still be
 5 considered disabled at step-three if her impairment(s) medically equal a listed
 6 impairment.³⁵ Medical equivalence can be established three ways, one of which is:

7 If an individual has an impairment that is described in the listings,
 8 but either:

- 9 a. the individual does not exhibit one or more of the findings
 specified in the particular listing, or
- 10 b. the individual exhibits all of the findings, but one or more of the
 findings is not as severe as specified in the particular listing,

11 then we will find that his or her impairment is medically equivalent to
 12 that listing if there are other findings related to the impairment that
 are at least of equal medical significance to the required criteria.³⁶

13 The ALJ is obligated to consider the relevant evidence to determine whether
 14 a claimant's impairment(s) meet or equal one of the specified impairments set forth
 15 in the listings.³⁷ Generally, a "boilerplate finding is insufficient to support a
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20 ³⁵ Soc. Sec. Ruling 17-2p.

21 ³⁶ *Id.*

22 ³⁷ *Lewis v. Apfel*, 236 F.3d 503, 512 (9th Cir.2001); 20 C.F.R. § 416.920(a)(4)(iii).
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1 conclusion that a claimant's impairment does not [meet or equal a listing].”³⁸ The
 2 Ninth Circuit has recognized, however, that the ALJ need not recite the reasons for
 3 her step-three determination under the listings portion of the decision so long as
 4 the relevant evidence and underlying findings are discussed in the ALJ's decision.³⁹
 5 Moreover, a boilerplate finding may be appropriate where a claimant fails to set
 6 forth any evidence for the ALJ to conclude an impairment could meet or equal a
 7 listing.⁴⁰

8 1. Listing 1.04A

9 To meet Listing 1.04A, a claimant must establish 1) evidence of nerve root
 10 compression characterized by neuro-anatomic distribution of pain, 2) spine-motion
 11 limitation, 3) atrophy with associated muscle weakness or muscle weakness
 12 accompanied by sensory or reflex loss, and 4) if there is involvement of the lower
 13 back, positive straight-leg raising test (sitting and supine).⁴¹ Here, the ALJ found
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15 ³⁸ *Lewis*, 236 F.3d at 512; *see also Marcia v. Sullivan*, 900 F.2d 172, 176 (9th
 16 Cir.1990) (noting that the ALJ's unexplained finding at step three was reversible
 17 error).

18 ³⁹ *Lewis*, 236 F.3d at 513.

19 ⁴⁰ *Gonzalez v. Sullivan*, 914 F.2d 1197, 1201 (9th Cir. 1990).

20 ⁴¹ *Gnibus v. Berryhill*, 2017 WL 977594, at *4 (E. D. Cal. March 13, 2017) (finding
 21 Listing 1.04A was met) (citing *Sullivan v. Zebley*, 493 U.S. 521, 530 (1990) (“For a
 22 claimant to show that his impairment matches a listing, it must meet *all* of the
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1 Plaintiff's low back pain did not meet or equal Listing 1.04A because Plaintiff's
 2 spinal condition did not result in compromise of a nerve root or of the spinal cord
 3 accompanied by sensory or reflex loss and positive straight-leg raising test.⁴²
 4 Plaintiff argues, without pertinent citations to the record, that the ALJ erred.⁴³
 5 Plaintiff fails to present evidence revealing that her spinal condition resulted in
 6 compromise of a nerve root or the spinal cord accompanied by sensory or reflex loss,
 7 or spinal arachnoiditis, or spinal stenosis.⁴⁴ There is no proven error by the ALJ.

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 10 specified medical criteria. An impairment that manifests only some of those
 11 criteria, no matter how severely, does not qualify.”)).

12 ⁴² AR 24.

13 ⁴³ Plaintiff—not the Court—must flesh out and support her arguments with law
 14 and facts. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 930 (9th Cir.
 15 2003) (“We require contentions to be accompanied by reasons.”); *McPherson v.*
 16 *Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997) (“[I]ssues adverted to in a perfunctory
 17 manner, unaccompanied by some effort at developed argumentation, are deemed
 18 waived. It is not sufficient for a party to mention a possible argument in a most
 19 skeletal way, leaving the court to . . . put flesh on its bones.”).

20 ⁴⁴ *See, e.g.*, AR 365 (noting normal straight leg raising test and exhibiting normal
 21 range of motion of the back); AR 740, 744, & 777 (noting although positive straight
 22 leg raise on the left for ipsilateral and decreased range of lumbar back motion, the
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1 2. Listing 11.11

2 Listing 11.11 applies to post-polio syndrome and is characterized by either:

- 3 • disorganization of motor function in two extremities, resulting in an
- 4 extreme limitation in the ability to stand up from a seated position,
- 5 balance while standing or walking, or use of the upper extremities; or
- 6 • unintelligible speech; or
- 7 • bulbar and neuromuscular dysfunction resulting in respiratory or
- 8 nutritional failures; or
- 9 • marked limitation in physical functioning and in one of the non-
- 10 exertional categories.⁴⁵

11 Here, the ALJ found Plaintiff's post-polio myelitis did not meet or equal Listing

12 11.11 because the record did not demonstrate satisfaction of one of the above

13 categories.⁴⁶ Plaintiff argues the ALJ erred in reaching this finding. However, a

14 review of the medical record indicates that the ALJ's finding that Plaintiff did not

15 meet or medically equal the requirements of one of the Listing 11.11 categories—

16 namely, disorganization of motor function in *two* extremities that resulted in an

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19 contralateral was negative on the left and the right straight leg raises were

20 negative).

21 ⁴⁵ 20 C.F.R. pt. 404, Subpt. P., app. 1, § 11.11.

22 ⁴⁶ AR 24.

1 extreme limitation in one of the identified abilities—is a rational finding supported
2 by substantial evidence.

3 3. Listing 1.02A

4 Listing 1.02A is 1) “[c]haracterized by gross anatomical deformity⁴⁷ . . . and
5 chronic joint pain and stiffness with signs of limitation of motion or other abnormal
6 motion of the affected joint(s),” 2) “findings on appropriate medically acceptable
7 imaging of joint space narrowing, bony destruction, or ankylosis of the affected
8 joints,” and 3) “[i]nvolvement of one major peripheral weight-bearing joint . . .
9 resulting in inability to ambulate effectively.”⁴⁸ One is unable to ambulate
10 effectively if she has “impairment(s) that interfere[] very seriously with the
11 individual’s ability to independently initiate, sustain, or complete activities.”⁴⁹

12 Examples of ineffective ambulation include:

13 the inability to walk without the use of a walker, two crutches or two
14 canes, the inability to walk a block at a reasonable pace on rough or
15 uneven surfaces, the inability to use standard public transportation, the
16 inability to carry out routine ambulatory activities, such as shopping
and banking, and the inability to climb a few steps at a reasonable pace
with the use of a single hand rail.⁵⁰

17 ⁴⁷ 20 C.F.R. Pt. 404, Subpt. P, app. 1, § 1.02 (offering the following examples for a
18 gross anatomical deformity: subluxation, contracture, bony or fibrous ankylosis, or
19 instability).

20 ⁴⁸ *Id.*

21 ⁴⁹ *Id.* § 1.00B2b.

22 ⁵⁰ *Id.*

1 Here, the ALJ did not articulate specific findings as to the three broad
 2 criteria necessary to satisfy Listing 1.04A, instead generally stating she
 3 “considered all of the listings” and finding that Plaintiff did “not meet or medically
 4 equal the criteria of any listed impairments.”⁵¹ A boilerplate listings finding is not
 5 per se error if the ALJ otherwise discusses the relevant evidence and makes
 6 related findings to permit the Court to assess whether the ALJ’s no-listings finding
 7 is supported by substantial evidence.

8 Here, although the record reflects that Plaintiff satisfies the first criteria,⁵²
 9 the Court determines that the ALJ’s discussion supports the ALJ’s no-listings
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11 ⁵¹ AR 24.

12 ⁵² As a result of her post-polio myelitis, Plaintiff has a gross anatomical
 13 deformity—contracture—and chronic joint pain and stiffness with signs of
 14 limitation of motion or other abnormal motion of the affected knee and ankle joints.
 15 *See, e.g.*, AR 28 (ALJ finding contracture in the left knee and the “longitudinal
 16 treatment records show that the claimant has experienced . . . left lower extremity
 17 pain and weakness related to post-polio myelitis syndrome.”); AR 548
 18 (“Extremities: changes left lower extremity from her polio”); AR 549 (“slightly
 19 abnormal gait”); AR 550 (“Left lower extremity deformities [d]ue to polio”); AR 587
 20 (“She will benefit from skilled physical therapy to address postural and core muscle
 21 weakness, in addition to L LE paresis in order to improve gait mechanics and
 22 reduce pain”); AR 647 (“Muscle strength of the left leg extensors, 1/5. Left
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1 finding. The Court agrees with the Commissioner that the ALJ found that
 2 “Plaintiff had not shown an inability to ambulate effectively.”⁵³ In pertinent part,
 3 the ALJ stated, “In response to questions posed by the claimant’s representative at
 4 the hearing, Dr. Morse noted that the claimant has weakness in her left lower
 5 extremity; however, he opined she is able to ambulate at the sedentary level as
 6 described above.”⁵⁴ Turning to Dr. Morse’s testimony, he opined that Plaintiff could
 7 do occasional stairs and should have a “limited exposure, or limited to concentrated
 8 exposure to uneven terrain.”⁵⁵ In arguing that the ALJ found that she was unable
 9 to ambulate effectively, Plaintiff focuses on Dr. Morse’s subsequent testimony
 10 wherein he stated that Plaintiff “should avoid uneven terrain, avoid even moderate
 11 exposure to uneven terrain.”⁵⁶ Plaintiff emphasizes the initial part of this

13 dorsiflexors of the foot 1/5. Left knee with noted contracture. Left ankle with
 14 restricted ROM, reducible to 90 degrees/-1 degrees.”); AR 657 (“She does appear to
 15 have minor LT knee flexion cxr. . . Explained the purpose of the KAFO to provide
 16 stability flexion/extension and M/L stability at the knee and to reduce or prevent
 17 further knee flexion contracture.”); & AR 648 (“[P]atient does have an ankle joint
 18 contracture. . . she has a knee contracture as well.”).

19 ⁵³ ECF No. 19 at 9 (citing AR 24).

20 ⁵⁴ AR 30.

21 ⁵⁵ AR 48.

22 ⁵⁶ AR 50.

statement “avoid uneven terrain”; however, when this statement is read in light of Dr. Morse’s entire testimony, there is substantial evidence supporting the ALJ’s finding that Dr. Morse opined that Plaintiff was ambulatory, i.e., she could walk on uneven ground for a block at a reasonable pace and she could occasionally climb stairs. That the ALJ crafted an RFC that restricted Plaintiff from walking on uneven ground does not alter the ALJ’s finding that Plaintiff was able to ambulate effectively for listings-analysis purposes. The ALJ’s ambulation finding is a rational finding supported by substantial evidence considering Dr. Morse’s testimony, Samantha Price, DPM’s opinion that Plaintiff was likely able to do a sedentary job, the medical observations as to Plaintiff’s ambulation, and her use of a brace to improve her ambulation.⁵⁷

Plaintiff fails to establish step-three err.⁵⁸

⁵⁷ AR 658-69; AR 638 (noting that KAFO brace adjustment and physical therapy would help with gait); and *compare* AR 363 & 365 (“Coordination and gait normal. Tandem, toe, and heel walking is normal”), AR 637, 640, & 647 (“ambulating), & AR 408 & 417 (“Normal gait”), AR 657 (“She was able to successfully don and ambulate in the KAFO”), *with* AR 549 (“slightly abnormal gait”), AR 587 (“antalgic pattern with ipsilateral trunk lean with L LE stance. Slight circumduction of L LE to advance L LE.”), & AR 592 & 607 (“Impaired gait”).

⁵⁸ Because the Listing 1.02A “inability to ambulate effectively” criteria is not satisfied, the Court need not resolve, under an equivalence analysis, whether

B. Plaintiff's Symptom Reports: Plaintiff fails to establish error.

Plaintiff argues the ALJ failed to provide valid reasons for rejecting her symptom reports. When examining a claimant's symptom reports, the ALJ must make a two-step inquiry. "First, the ALJ must determine whether there is objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged."⁵⁹ Second, "[i]f the claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the claimant's testimony about the severity of the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the rejection."⁶⁰ Here, the ALJ found Plaintiff's statements concerning the intensity, persistence, and limiting effects of her symptoms inconsistent with the objective findings, her presentation at appointments, and her high functioning activities of daily activities.⁶¹

First, as to the ALJ's finding that Plaintiff's symptom reports were inconsistent with the objective findings, symptom reports cannot be solely discounted on the grounds that they were not fully corroborated by the objective

medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joints was not needed to satisfy Listing 1.02A.

⁵⁹ *Molina*, 674 F.3d at 1112.

⁶⁰ *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter*, 504 F.3d at 1036).

⁶¹ AR 29.

1 medical evidence.⁶² However, objective medical evidence is a relevant factor in
 2 considering the severity of the reported symptoms.⁶³ Here, the ALJ highlighted
 3 that the medical records did not show edema or vascular insufficiency of Plaintiff's
 4 lower extremities, which was inconsistent with her reported need to elevate her
 5 legs twice a day because of swelling in her knees or legs.⁶⁴ In June 2017, Plaintiff
 6 complained of edema in her feet during a medical appointment, a condition she
 7 reported as new and that it was relieved by elevation.⁶⁵ However, subsequent
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 10 ⁶² See *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

11 ⁶³ Objective medical evidence means signs, laboratory findings, or both. 20 C.F.R.
 12 §§ 404.1502(f), 416.902(k). In turn, "signs" is defined as:

13 one or more anatomical, physiological, or psychological abnormalities
 14 that can be observed, apart from [the claimant's] statements
 (symptoms). Signs must be shown by medically clinical diagnostic
 techniques.

15 *Id.* §§ 404.1502(g), 416.902(l). Evidence obtained from the "application of a
 16 medically acceptable clinical diagnostic technique, such as evidence of reduced joint
 17 motion, muscle spasm, sensory deficits, or motor disruption" is considered objective
 18 medical evidence. 3 Soc. Sec. Law & Prac. § 36:26, Consideration of objective
 19 medical evidence (2019).

20 ⁶⁴ AR 29 (*see, e.g.*, AR 362, 426, 432, 438, 538, 611, 637, 744, 763, 767, & 777 (no
 21 edema or swelling in knees noted)).

22 ⁶⁵ AR 738.
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1 medical records did not indicate that edema continued.⁶⁶ Accordingly, the ALJ's
2 finding that Plaintiff's complaints of persistent edema for which she would need to
3 raise her legs during the work day were inconsistent with the objective medical
4 findings is rational and supported by substantial evidence.

5 The ALJ also found that Plaintiff's gait was generally noted as normal or
6 slightly abnormal, which the ALJ found inconsistent with Plaintiff's reported
7 severe difficulties walking due to pain and numbness in her left lower extremity.
8 There was conflicting medical evidence as to Plaintiff's gait, which was sometimes
9 noted as normal and other times noted as impaired.⁶⁷ It is the ALJ's role to weigh
10 conflicting medical evidence and the ALJ's finding that Plaintiff's severe difficulties
11 walking inconsistent with the medical observations and findings is supported by
12 substantial evidence. Moreover, the ALJ highlighted that Plaintiff was fitted for a
13 knee ankle foot orthosis (KAFO) in April 2017, which helped alleviate Plaintiff's
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16 ⁶⁶ *See, e.g.*, AR 758.

17 ⁶⁷ *Compare* AR 363 & 365 ("Coordination and gait normal. Tandem, toe, and heel
18 walking is normal"), AR 637, 640, & 647 ("ambulating), & AR 408 & 417 ("Normal
19 gait"), *with* AR 587 ("antalgic pattern with ipsilateral trunk lean with L LE stance.
20 Slight circumduction of L LE to advance L LE."), AR 592 & 607 ("Impaired gait")
21 AR 549 ("slightly abnormal gait"). *See also* AR 658-59 (Podiatrist's opinion that
22 Plaintiff would have less difficulty with a sedentary job).
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1 overloading syndrome which had contributed to her gait problems.⁶⁸ The ALJ also
2 highlighted that the medical records noted Plaintiff presented in no acute distress,
3 which was contrary to her allegation that she suffers from chronic pain that limits
4 her ability to stand, walk, and sit.⁶⁹ The ALJ's rational findings that Plaintiff's
5 reported pain, gait, and edema complaints were inconsistent with the objective
6 findings is supported by substantial evidence and were relevant to the ALJ's
7 assessment of Plaintiff's symptom reports. Yet, the ALJ rationally found that
8 Plaintiff's ability to walk was limited to some extent and limited Plaintiff to
9 sedentary work that did not involve walking on uneven ground.

10 Second, the ALJ discounted Plaintiff's reported symptoms because they were
11 inconsistent with her presentation at appointments. An ALJ may discount a
12 claimant's symptom reports if the claimant's statements and presentation during
13 medical appointments are inconsistent with statements during the disability
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16 ⁶⁸ AR 28 (citing AR 657 ("She was able to successfully don and ambulate in the
17 KAFO"); *see also* AR 638 (noting that KAFO brace adjustment and physical
18 therapy would help with gait). The effectiveness of treatment is a relevant factor in
19 determining the severity of a claimant's symptoms. 20 C.F.R. §§ 404.1529(c)(3),
20 416.913(c)(3); *see Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th
21 Cir. 2006); *Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008).

22 ⁶⁹ AR 29 (citing AR 538-50, 592-99, & 607-35).

1 proceeding.⁷⁰ Here, the ALJ noted that Plaintiff did not report leg or joint swelling
2 during medical appointments.⁷¹ The ALJ also noted during Plaintiff's monthly pain
3 management visits from 2015 to 2017 she reported her pain and ability to function
4 was controlled by the stable medication regimen.⁷² This record provides substantial
5 evidence supporting the ALJ's finding that Plaintiff reported more severe
6 symptoms during the disability process than she presented with at her medical
7 appointments. This was a clear and convincing reason to discount Plaintiff's
8 reported disability symptoms.

9 Finally, the ALJ discounted Plaintiff's symptom reports because they were
10 inconsistent with her high-functioning activities of daily living.⁷³ If a claimant can
11 spend a substantial part of the day engaged in pursuits involving the performance
12 of exertional or non-exertional functions, the ALJ may find these activities
13 inconsistent with the reported disabling symptoms.⁷⁴ The ALJ highlighted that
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15 ⁷⁰ See, e.g., *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) (The ALJ may
16 consider "ordinary techniques of credibility evaluation," such as reputation for
17 lying, prior inconsistent statements concerning symptoms, and other testimony
18 that "appears less than candid.").

19 ⁷¹ AR 29 (citing AR 743, 763, 767, & 775).

20 ⁷² AR 28 (citing AR 538-40, 546, & 635).

21 ⁷³ AR 29.

22 ⁷⁴ *Molina*, 674 F.3d at 1113.
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1 Plaintiff used her exercise bike, spent time cleaning her house, shopped for
 2 groceries and household items, took her children to the park and pool, prepared
 3 simple meals, and helped her children get ready for school.⁷⁵ The Court need not
 4 decide whether Plaintiff's deemed high-functioning activities of daily living
 5 constitute a clear and convincing reason to discount Plaintiff's symptoms. The ALJ
 6 offered another supported reason for discounting Plaintiff's symptoms—that her
 7 presentation at medical appointments was inconsistent with her disability
 8 statements—along with the finding that Plaintiff's reported symptoms were
 9 inconsistent with the objective findings.⁷⁶

10 In summary, Plaintiff fails to establish the ALJ erred by discounting her
 11 symptom reports.

12 **C. Lay Witness: Plaintiff fails to establish error.**

13 The ALJ discounted Plaintiff's sister's statements⁷⁷ because her statements
 14 were based on infrequent lay observation of Plaintiff and they were consistent with
 15

16 ⁷⁵ AR 25-26 & 29-30.

17 ⁷⁶ See *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir.
 18 2008); *Molina*, 674 F.3d at 1115 (“[S]everal of our cases have held that an ALJ’s
 19 error was harmless where the ALJ provided one or more invalid reasons for
 20 disbelieving a claimant’s testimony, but also provided valid reasons that were
 21 supported by the record.”).

22 ⁷⁷ AR 290-97.

1 Plaintiff's own subjective complaints, which were discounted as discussed above.⁷⁸
 2 "Testimony by a lay witness provides an important source of information about a
 3 claimant's impairments, and an ALJ can reject it only by giving specific reasons
 4 germane to each witness."⁷⁹ Here, the ALJ's decision to discount the sister's
 5 statements is rational and supported by substantial evidence. The sister has lived
 6 in a different state than Plaintiff since 2000, visiting her only once a year. That the
 7 sister had infrequent interaction and observation of her sister's physical abilities
 8 and activities was a germane and specific reason to discount the sister's
 9 statements. Moreover, on this record, it was a germane reason to discount the
 10 sister's statements for the same reasons the ALJ discounted Plaintiff's reported
 11 symptoms.⁸⁰

12 Plaintiff fails to establish err by the ALJ.

13 **D. RFC: Plaintiff fails to establish error.**

14 Plaintiff argues the ALJ failed to properly include her reported need to
 15 elevate her legs twice a day for thirty minutes at a time and be absent one day or
 16 more per month into the RFC. "[T]he ALJ is responsible for translating and
 17

18 ⁷⁸ AR 32.

19 ⁷⁹ *Regennitter v. Comm'r*, 166 F.3d 1294, 1298 (9th Cir. 1999).

20 ⁸⁰ *See Valentine v. Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009). As
 21 noted above, the Court is not determining whether the ALJ's proffered high-
 22 functioning-activities-of-daily-living reason is supported by substantial evidence.
 23

1 incorporating clinical findings into a succinct RFC.”⁸¹ Plaintiff’s RFC argument
 2 merely restates Plaintiff’s earlier allegations of error, which are not supported by
 3 the record. Accordingly, the ALJ’s hypothetical and RFC properly accounted for the
 4 limitations supported by the record.⁸²

5 **E. Conclusion**

6 Accordingly, **IT IS HEREBY ORDERED:**

- 7 1. Plaintiff’s Motion for Summary Judgment, **ECF No. 17**, is **DENIED**.
- 8 2. The Commissioner’s Motion for Summary Judgment, **ECF No. 19**, is
 9 **GRANTED**.
- 10 3. The Clerk’s Office shall enter **JUDGMENT** in favor of Defendant.
- 11 4. The case shall be **CLOSED**.

12 **IT IS SO ORDERED.** The Clerk’s Office is directed to file this Order and
 13 provide copies to all counsel.

14 **DATED** this 17th day of March 2021.

15
 16 s/Edward F. Shea
 EDWARD F. SHEA
 17 Senior United States District Judge

18
 19 ⁸¹ *Rounds v. Comm’r Soc. Sec. Adm.*, 807 F.3d 996, 1006 (9th Cir. 2015).

20 ⁸² *See Magallanes v. Bowen*, 881 F.2d 747, 756-57 (9th Cir. 1989) (holding it is
 21 proper for the ALJ to limit a hypothetical to those restrictions supported by
 22 substantial evidence in the record).
 23